

65-34,161

Chapter 65.--PUBLIC HEALTH

Article 34.--SOLID AND HAZARDOUS WASTE

65-34,161. Title and application. This act shall be known and may be cited as the voluntary cleanup and property redevelopment act and shall apply to real property where environmental cleanup may be needed.

History: L. 1997, ch. 137, § 1; July 1.

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65-34,162. Definitions. As used in this act:

(a) "Contaminant" means such alteration of the physical, chemical or biological properties of any soils and waters of the state as will or is likely to create a nuisance or render such soils or waters potentially harmful, or injurious to public health, safety or welfare, or to the plant, animal or aquatic life of the state.

(b) "Department" means the department of health and environment.

(c) "Secretary" means the secretary of health and environment.

History: L. 1997, ch. 137, § 2; July 1.

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65-34,163. Rules and regulations. The secretary may adopt rules and regulations necessary to define, administer and enforce the provisions of this act.

History: L. 1997, ch. 137, § 3; July 1.

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65-34,164. Voluntary application; application of other laws; eligible property. (a) The program established in this act shall be voluntary and may be initiated by submission of an application to the department for properties where investigation and remediation may be necessary to protect human health or the environment based upon the current or proposed future use or redevelopment of the property.

(b) Property which may be eligible for reimbursement from trust funds established in the Kansas storage tank act, K.S.A. 65-34,100 et seq., and amendments thereto, or the Kansas drycleaner environmental response act, K.S.A. 65-34,141 et seq., and amendments thereto, shall meet all of the requirements of the respective act.

(c) The provisions of this act shall not apply to:

(1) Property that is listed or proposed for listing on the national priorities list of superfund sites established under the comprehensive environmental response, compensation, and liability act (CERCLA), 42 U.S.C.A. 9601 et seq.;

(2) property the contaminated portion of which is the subject of:

(A) Enforcement action issued pursuant to city, county, state or federal environmental laws; or

(B) environmental orders or agreements with city, county, state or federal governmental agencies;

- (3) a facility which has or should have a permit pursuant to the resource, conservation and recovery act (RCRA), 42 U.S.C.A. 6901 et seq., which contains a corrective action component;
- (4) oil and gas activities regulated by the state corporation commission;
- (5) property that presents an immediate and significant risk of harm to human health or the environment; or
- (6) property that the department determines to be a substantial threat to public or private drinking water wells.

History: L. 1997, ch. 137, § 4; July 1.

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65-34,165. Application; fee; action on; agreement; deposit; access to property; termination of agreement; fund, use and disposition of. (a) Each application or reapplication for participation in the voluntary program shall be accompanied by a nonrefundable application fee of \$200 to cover processing costs.

(b) The department shall review and approve or deny all applications.

(c) The department shall notify the applicant in writing, whether the application is approved or denied. If the application is denied, the notification shall state the reason for the denial.

(d) Following departmental approval of an application, a voluntary agreement in accordance with this act must be executed between the participant and the department. The department shall not commence oversight and review activities until the voluntary agreement is executed.

(e) As part of the voluntary agreement, the department shall require the applicant to post a deposit not to exceed \$5,000. The deposit shall be used to cover all direct and indirect costs of the department in administration of the program, including but is not limited to providing technical review, oversight and guidance in relation to the property covered in the application. If the costs of the department exceed the initial deposit, an additional amount agreed upon by the department and the applicant will be required prior to proceeding with any voluntary work under the program. Timely remittance of reimbursements to the department is a condition of continuing participation. After the mutual termination of the voluntary agreement, the department shall refund any remaining balance within 60 days.

(f) During the time allocated for review of applications, assessments, other investigative activities and remedial activities under this act, the department, upon reasonable notice to the applicant, shall have access at all reasonable times to the subject real property.

(g) The applicant may unilaterally terminate the voluntary agreement prior to completion of investigative and remedial activities if the applicant leaves the site in no worse condition, from a human health and environmental perspective, than when the applicant initiated voluntary activities. The applicant must notify the department in writing of the intention to terminate the voluntary agreement. The department will cease billing for review of any submittal under the voluntary agreement upon receipt of notification. Within 90 days after receipt of notification for termination, the department shall provide a final bill for services provided. If the applicant requests termination of the voluntary agreement under this subsection, initial deposits are not refundable. In the event the department has costs in excess of the initial deposit, the applicant must remit full payment of those costs. Upon payment of all costs, the department shall notify the applicant in writing that the voluntary agreement has been terminated.

(h) The department may terminate the voluntary agreement if the applicant:

(1) Violates any terms or conditions of the voluntary agreement or fails to fulfill any obligations of the voluntary agreement; or

(2) fails to address an immediate and significant risk of harm to public health and the environment in an effective and timely manner.

The department shall notify the applicant in writing of the intention to terminate the voluntary agreement and include a summary of the costs of the department. The notification shall state the reason or reasons for the termination.

(i) There is established a fund in the state treasury the voluntary cleanup fund. Revenue from the following sources shall be deposited in the state treasury and credited to the fund:

(1) Moneys collected for application fees;

(2) moneys collected as deposits for costs associated with administration of the act, including technical review, oversight and guidance;

(3) moneys received by the secretary in the form of gifts, grants, reimbursements or appropriations from any source intended to be used for purposes of the fund; and

(4) interest attributable to the investment of moneys in the fund.

(j) Moneys in the voluntary cleanup fund shall only be expended for costs of:

(1) Review of applications;

(2) technical review, oversight, guidance and other activities necessary to carry out the provisions of this act;

(3) activities performed by the department to address immediate or emergency threats to human health and the environment related to a property under this act; and

(4) administration and enforcement of the provisions of this act.

(k) On or before the 10th of each month following the month in which moneys are first credited to the voluntary cleanup fund, and monthly thereafter on or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the voluntary cleanup fund interest earnings based on:

(1) The average daily balance of moneys in the voluntary cleanup fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(1) All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section.

History: L. 1997, ch. 137, § 5; July 1.

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65-34,166. Remedial action; determination whether required; plan. (a) The department shall review reports, including any environmental assessments and investigations submitted by the applicant, and make a determination as to any required actions. If the department determines that no remedial action is necessary, the department may issue a no further action determination pursuant to K.S.A. 65-34,169.

(b) If the department determines that further investigation or remediation is required, the applicant shall submit to the department a voluntary cleanup plan that follows the scope of work prepared by the department for voluntary investigation or remediation and includes the actions necessary to address the contamination.

History: L. 1997, ch. 137, § 6; July 1.

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65-34,167. Same; alternatives; factors considered. Remedial alternatives shall be based on the actual risk to human health and the environment currently posed by contaminants on the property, considering the following factors:

- (a) The present and proposed future uses of the property and surrounding properties;
- (b) the ability of the contaminants to move in a form and manner which would result in exposure to humans and the surrounding environment at levels which exceed applicable state standards and guidelines or the results of a risk analysis if such standards and guidelines are not available; and
- (c) the potential risks associated with proposed cleanup alternatives and the reliability and economic and technical feasibility of such alternatives.

History: L. 1997, ch. 137, § 7; July 1.

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65-34,168. Plan; approval or disapproval; procedures; approval void, when; verification of implementation. (a) The department shall provide formal written notification to the applicant that a voluntary cleanup plan has been approved or disapproved within 60 days of submittal of the voluntary cleanup plan by the applicant unless the department extends the time for review to a date certain.

(b) The department shall approve a voluntary cleanup plan if the department concludes that the plan will attain a degree of cleanup and control of contaminants that complies with all applicable statutes and rules and regulations.

(c) If a voluntary cleanup plan is not approved by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial. If the department disapproves a voluntary cleanup plan based upon the applicant's failure to submit the information required, the department shall notify the applicant of the deficiencies in the information submitted.

(d) The approval of a voluntary cleanup plan by the department applies only to those contaminants and conditions identified on the property based upon the statutes and rules and regulations that exist when the application is submitted.

(e) Upon determination by the department that a voluntary cleanup plan is acceptable, the department shall publish a notice of the determination in a local newspaper of general circulation in the area affected and make the voluntary cleanup plan available to the public. The public shall have 15 days from the date of publication during which any person may submit to the department written comments regarding the voluntary cleanup plan. After 15 days have elapsed, the department may hold a public information meeting if, in the department's judgment, the comments submitted warrant such a meeting or if the applicant requests such a meeting. Upon completion of the public notification and participation process, the department shall make a determination to approve the plan in accordance with this section.

(f) Departmental approval of a voluntary cleanup plan shall be void upon:

- (1) Failure of an applicant to comply with the approved voluntary cleanup plan;
- (2) willful submission of false, inaccurate or misleading information by the applicant in the context of the voluntary cleanup plan; or
- (3) failure to initiate the plan within 6 months after approval by the department, or failure to complete the plan within 24 months after approval by the department, unless the department grants an extension of time.

(g) An applicant desiring to implement a voluntary clean up plan after the time limits prescribed by subsection (f)(3) have expired shall submit a written petition for reapplication accompanied by written assurances from the applicant that the conditions on the subject

property are substantially similar to those existing at the time of the original approval. Reapplications shall be reviewed by the department. Any reapplication that involves property upon which the condition has substantially changed since approval of the original voluntary cleanup plan shall be treated as a new application and shall be subject to all the requirements of this act.

(h) Within 45 days after the completion of the voluntary cleanup described in the approved voluntary cleanup plan, the applicant shall provide to the department assurance that the plan has been fully implemented. A verification sampling program shall be required by the department to confirm that the property has been cleaned up as described in the voluntary cleanup plan.

History: L. 1997, ch. 137, § 8; July 1.

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65-34,169. Determination no further action required; issuance; void, when. (a) After an applicant completes the requirements of this act, the department may determine that no further remedial action is required. Within 60 days after such completion, unless the applicant and the department agree to an extension of the time for review, the department shall provide written notification that a no further action determination has been made.

(b) (1) The department may consider in issuing this determination that contamination or a release of contamination originates from a source on adjacent property upon which the necessary action which protects human health and the environment is or will be taken by a viable and financially capable person or entity which may or may not be legally responsible for the source of contamination.

(2) The department shall provide written notification of a no further action determination.

(3) The issuance of a no further action determination by the department applies only to identified conditions on the property and is based upon applicable statutes and rules and regulations that exist as of the time of completion of the requirements.

(c) The department may determine that the no further action determination, under this section is void if:

(1) There is any evidence of fraudulent representation, false assurances, concealment or misrepresentation of the data in any document to be submitted to the department under this act;

(2) the applicant agrees to perform any action approved by the department and fails to perform such action;

(3) the applicant's willful and wanton conduct contributes to known environmental contamination; or

(4) the applicant fails to complete the voluntary actions required in the voluntary cleanup plan.

(d) If a no further action determination is not issued by the department, the department shall promptly provide the applicant with a written statement of the reasons for denial.

History: L. 1997, ch. 137, § 9; July 1.

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65-34,170. Environmental assessments, preparer. The department may accept only environmental assessments under this act prepared by a qualified environmental professional, as defined by rules and regulations adopted by the secretary.

History: L. 1997, ch. 137, § 10; July 1.

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65-34,171. Application of other laws; EPA involvement. (a) Nothing in this act shall absolve any person from obligations under any other law or rule and regulation, including any requirement to obtain permits or approvals for work performed under a voluntary cleanup plan.

(b) If the federal environmental protection agency (EPA) indicates that it is investigating a property which is the subject of an approved voluntary cleanup plan, the department shall attempt to obtain agreement with the EPA that the property be addressed under the appropriate state program or, in the case of property being addressed through a voluntary cleanup plan, that no further federal action be taken with respect to the property at least until the voluntary cleanup plan is completely implemented.

History: L. 1997, ch. 137, § 11; July 1.

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65-34,172. Plan; enforcement; use of information as basis of other enforcement actions. (a) Voluntary cleanup plans are not enforceable against an applicant unless the department can demonstrate that an applicant who initiated a voluntary cleanup under an approved plan has failed to fully implement that plan. In that case, the department may require further action if such action is authorized by other state statutes administered by the department or rules and regulations of the department.

(b) Information provided by an applicant to support a voluntary cleanup plan shall not provide the department with an independent basis to seek penalties from the applicant pursuant to applicable statutes or rules and regulations. If, pursuant to other applicable statutes or rules and regulations, the department initiates an enforcement action against the applicant subsequent to the submission of a voluntary cleanup plan regarding the contamination addressed in the plan, the voluntary disclosure of the information in the plan shall be considered by the enforcing authority to mitigate penalties which could be assessed to the applicant.

History: L. 1997, ch. 137, § 12; July 1.

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65-34,173. Annual report. The department shall publish annually in the Kansas register a summary of the number of applicants, the general categories of those applicants and the number of cleanups completed pursuant to this act.

History: L. 1997, ch. 137, § 13; July 1.

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65-34,174. Severability. If any provision of this act or the application thereof to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or application. To this end the provisions of this act are severable.

History: L. 1997, ch. 137, § 14; July 1.